complete cargo," would be subject to the *de misimis* rule. Then when the rule came to be applied it was a matter of fact whether, in all the circumstances, precise accuracy could be obtained (as I think it might well have been here) or whether there were limits of accuracy which were commercially reasonable or (as the argument for the owners would have it) which were not commercially significant.

There is, I think, very little law involved in a decision on an issue such as that. But the judge, I think rightly, said that it is a matter in which a court might, having regard to the authorities (some fairly recent in this court), interfere, because it is a mixed question of fact and law. But substantially, and particularly when we come to consider in this court whether we would interfere, it is a matter of fact whether, on the basis that there is this shortage below the agreed figure of 12,600 tons, that is so negligible in the circumstances of the case, having regard to all the factors, that it ought to have been ignored.

For myself, I think that there is very little evidence, if any, except those bare statements of the figures themselves and the obligation under the charterparty to load that amount which would permit the court to say that this quantity was negligible. On the other hand, there does seem to be evidence before us now, if we look at it, that there was a view to be taken the other way. An experienced umpire, conversant with the trade and no doubt familiar with the Baltic engagements with regard to charter-parties, had to decide whether this was or not a negligible matter. He came down on the side that it was something of moment and that by 5 p.m. on Friday, December 29, 1961, the ship was not completely loaded."

Then Pearson L.J. said this at page 447:

"Once it is appreciated what the test is, namely, whether the *de minimis* rule applies or not, whether the departure from the precise terms of the obligation is so trivial as to be negligible or whether it has some significance, then the rest becomes a pure question of fact."

Diplock L.J. said on pages 448, 449:

"In this case the relevant circumstances to consider were, not only that the charterers had undertaken to load "a full and complete cargo," but that the master had already specified — as he was entitled to under the contract — 12,600 tons as the full and complete cargo; and the amount of goods being loaded could be measured within a very small margin of error, much smaller than the 11 tons 16 cwts. which Mr. Mustill has said the court should ignore.

I can see, in those circumstances, like my brethren, no ground for overruling the finding of the umpire to which they have referred. Not only do I see no reason for overruling it — and it is very much a matter of mixed law and fact, in which the opinion of a commercial arbitrator is entitled to great weight and respect — but I myself would hold, even without such finding, that this, for the reasons I have already indicated, did not fall within the rule de minimis non curat lex, because it was quite plainly, on the facts of the case, commercially practicable to get very much closer than that to the "full and complete cargo" of 12,600 tons."

Those observations of the Court of Appeal do, I think, throw light on the scope of the rule and it would appear to indicate that once it is appreciated whether the rule applies, then the rest becomes a pure question of fact. In my judgment, 12 pipes measuring a total of 360 feet, weighing 36 tons, costing $14,400 and insured at $16,000, affect far too high a proportion of the whole consignment of 668 pipes to be capable of being dismissed as a matter *de minimis*. It may well be that in the case of a single pipe or two out of the whole consignment, the rule would apply, but I fail to see how it is possible to hold that 12 pipes can be ignored or treated as trifling and to be brushed aside. I find therefore on the facts before me that a consignment of 668 pipes is not totally lost when 12 pipes making it up are not lost.

The plaintiffs' case is dismissed with costs.

Claim dismissed.

Solicitors: *Ng Ek Teong & Partners; Skrine & Co.*

D.R. GARNER v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) June 9, 1972]

[Penang — Criminal Appeal No. 35 of 1972]

Penal Code, s. 420 — Cheating — Using cheques without account in bank — Using fictitious name — Intention of escaping punishment — Expectation of deportation — Proper sentence.

The accused was convicted and sentenced to 9 months' imprisonment on the charge of cheating a certain salesman by inducing the latter to deliver to him goods to the value of $1,830 with a cheque in respect of which he had no account. He admitted to all the facts. He appealed against sentence.

Held: the accused should be treated as a first offender but there was no mitigating factor in all the circumstances and facts of the case. His sentence should be enhanced to 19 months' jail.

Per Chang Min Tat J.: "I should take the opportunity of correcting an unfortunate misconception that seemed to prevail in certain quarters that the colour of an accused's skin had anything to do with the question of sentence. I am compelled to say that if proper regard was given to the terms of the judgment which I delivered no foundation would be discovered for such a misconception....

I must deplore any idea that a stranger can come to our shores and break our laws with impunity and hope to get away with his crimes in the expectation that he would be deported. The accused will be deported, in due course but only after he has served a proper sentence."

MAGISTRATE'S CRIMINAL APPEAL.

Appellant in person.

Azmel bin Haji Ma'amor (Deputy Public Prosecutor) for the respondent.

Chang Min Tat J. (delivering oral judgment): The accused was charged with the offence of cheating a certain salesman by inducing him to deliver to the accused electronic equipment to the value of $1,830 with a cheque in respect of which he had no account whatsoever. As a result of his representation that he was the operator of an account in the bank for which he held the cheque, the shopkeeper delivered to him the goods. A part of the misrepresentation was the usage of a fictitious name. The cheque when presented to the bank for payment was naturally dishonoured. That occurred 3 days afterwards. The complainant immediately went to the accused's house and found him missing. Two days afterwards, that is, a good 5 days after the purchase of the goods, the accused was arrested by the police at the customs clearance point at Butterworth.

At his trial he admitted all these facts. His plea was accepted and after speaking in mitigation he was convicted and sentenced to 9 months' imprisonment. Against that sentence he appealed. Whether he was advised as he suggested that because of the colour of his skin he could get a binding over or whether he

himself thought he might chance his luck in coming to this court on appeal are really matters of no great consequences. But perhaps I should take the opportunity of correcting an unfortunate misconception that seemed to prevail in certain quarters that the colour of an accused's skin had anything to do with the question of sentence. I am compelled to say that if proper regard was given to the terms of the judgment which I delivered no foundation would be discovered for such a misconception. But the point was that at the appeal the accused advanced grounds which were deliberately false. He pleaded he had employment with an oil drilling company somewhere in Arabia and that his wife though suffering from a very serious illness and his child would be coming to Malaysia to set up home while he went to work in Arabia. It was his submission that during the periods of off-duty leave in Arabia, he would fly back to Malaysia to rejoin his family. Having some knowledge of the immigration laws of this country I find that submission very difficult to believe. But nevertheless I gave him an opportunity to establish that that was the case. He is even today unable to produce any evidence to substantiate his allegations. On the other hand, the Deputy Public Prosecutor took the hint and discovered from the Immigration Department that he had not made any application for permanent residence in this country either for himself or for his wife. I hope it will be realised if it has not been realised before that a very dim view is taken of anyone who comes to the court with the expressed intention of misleading it. Be that as it may, in answer to my invitation as I am bound by law to do, to address me, why in revision I should not increase the sentence, he chose to tell me that he had no intentions of cheating, that he had in fact carried the goods which are of a considerable bulk across the waters from Penang to Butterworth after vacating the house in which he was residing and that at the customs clearance point which he had to pass in order to decamp from Penang he had, he wanted me to believe, the intention of phoning the shopkeeper to return him the goods. I am very sorry, that I cannot accept that submission since he had admitted the element of cheating in the facts given against him. I shall, for the purposes of sentence, myself treat the accused as a first offender but even as a first offender I can for myself find no mitigating factor in all the circumstances and facts of the case. I must deplore any idea that a stranger can come to our shores and break our laws with impunity and hope to get away with his crimes in the expectation that he would be deported. The accused will be deported, in due course but only after he has served a proper sentence. The accused will now go to jail for 18 months.

Order accordingly.

CHEAH CHOON GAN & ORS. v. REGISTRAR OF TITLES, KEDAH

[F.C. (Azmi L.P., Gill and Ali F.JJ.) August 3, 1972]

[Alor Star — Federal Court Civil Appeal No. 95 of 1971]

Stamps — Partition of land — Subdivision — Exchange — National Land Code, s. 418 — National Land Code (Penang & Malacca Titles) Act, 1963 — Stamp Ordinance, 1949, 1st Sch. items 43, 32 & 56.

In this case the seven appellants were the co-proprietors of a piece of land. They entered into a partition agreement and effected cross-transfers of the land by means of three memoranda of transfer on sub-division of the land being granted. The solicitors for the appellants requested the collector to value separately the land described in the three memoranda of transfer and the collector valued the property at $62,000, $70,200 and $55,600 respectively. After receiving the valuation the solicitors proceeded to have the memorandum effecting the property valued at $70,200 stamped with *ad valorem* duty and the other two memoranda with 50 cents stamps. They then presented the stamped memoranda for registration. The collector accepted the memorandum of transfer stamped with the *ad valorem* duty but rejected the other two on the ground that they were not properly stamped. The appellants then appealed to the High Court, which dismissed the appeal. On appeal to the Federal Court, it was argued that this was a case of partition or exchange and in either case it would come within the scope of section 4(3) of the Stamp Ordinance read with Items 32 and 43 of the First Schedule thereto.

Held, allowing the appeal: this was a case of exchange attracting Item 43 of the First Schedule to the Stamp Ordinance and since *ad valorem* duty had been paid on the memorandum of greater value, the other two instruments stamped with the 50 cents stamp were properly stamped.

FEDERAL COURT.

Neoh Guan Beng for the appellant.

Tunku Mokhtar bin Tunku Yaacob (Legal Adviser, Kedah) for the respondent.

Azmi L.P.: This is an appeal from a judgment of the High Court at Alor Star in exercise of its appellate jurisdiction under section 418 of the National Land Code.

The facts which are not disputed may be briefly stated as follows: —

The seven appellants purchased a piece of land from Henrietta Rubber Estate Ltd. and thus became the co-proprietors of the said land in the following three groups of shares, namely, the first group consisting of the first appellant Cheah Choon Gan holding 95/235 shares, the second group consisting of the second and third appellants Thian Now (f) and Cheah Swee Ean holding 80/235 shares and the third group consisting of the 4th, 5th, 6th and 7th appellants, Chew Cheng Cheong, Yow Tuan Beng, Tan Seng and Ooi Eaw Tee (f) holding 60/235 shares. Subsequently, by a partition agreement dated 5th July 1967, made among themselves, they agreed that the land be sub-divided into seven lots. A sub-division of the land was effected with the result that the said land became Lots Nos: 2762, 2763, 2757, 2758, 2759, 2760 and 2761, and for these lots were issued Grants Nos: 1637, 1638, 1632, 1633, 1634, 1635 and 1636 respectively.

The sub-division was apparently made under Part 9, Chapter I entitled "Sub-division of Lands" of the National Land Code and in consequence thereof the names of all the proprietors with their original shares are entered on each of the seven titles.